IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-437

JAMES L. BUCKLEY, EUGENE J. McCARTHY, WILLIAM A. STEIGER, STEWART R. MOTT, COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY–McCARTHY '76, CONSERVATIVE PARTY OF THE STATE OF NEW YORK, LIBERTARIAN PARTY, MISSISSIPPI REPUBLICAN PARTY, NEW YORK CIVIL LIBERTIES UNION, INC., AMERICAN CONSERVATIVE UNION, CONSERVATIVE VICTORY FUND, HUMAN EVENTS, INC.,

Appellants,

v.

FRANCIS R. VALEO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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v.

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JURISDICTIONAL STATEMENT

Appellants James L. Buckley, *et al.*, appeal from a judgment and order of the United States District Court for the District of Columbia, sitting with three judges, denying injunctive relief sought against the operation and effect of the Revenue Act of 1971, Public Law 92-178, 85 Stat. 497, as amended by Public Law 93-53, 87 Stat. 134, and as further amended by the Federal Election Campaign Act Amendments of 1974, 26 U.S.C. §§ 9001 *et seq.*, codified as Subtitle H of the Internal Revenue Code of 1954 (Subtitle H).

JUDGMENT AND OPINIONS BELOW

The judgment of the District Court entered August 15, 1975, is printed as Appendix A hereto. The District Court adopted portions of a decision of the United States Court of Appeals for the District of Columbia Circuit (*en banc*), also entered August 15, 1975, in *Buckley v. Valeo*, No. 75-1061. The judgment and opinions of that Court are printed as Appendix A to appellants' Jurisdictional Statement in their appeal, filed today, from that Court's decision.

JURISDICTION

Appellants commenced this action in the United States District Court for the District of Columbia seeking injunctive and declaratory relief against the operation and effect of Subtitle H and other statutes (to wit, the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974). The entire case was certified by the District Court to the Court of Appeals for the District of Columbia Circuit, sitting *en banc*. *Buckley* v. *Valeo*, 387 F. Supp. 135 (1975). That Court remanded the case to the District Court for fact finding, definition of constitutional questions, and recertification. All the constitutional questions, including those relating to Subtitle H, were recertified to the Court of Appeals by the District Court; but the District Court, acting pursuant to a suggestion made by the Court of Appeals (App. I-82)[1], also constituted itself as a District Court of three judges to hear and determine, concurrently with the Court of Appeals, the Subtitle H issues. This was done to ensure jurisdiction by this Court on appeal.[2] The judgment and order of the

[1] Vol. I of the Appendix herein.

[2] Doubt arose as to the proper jurisdiction for Subtitle H issues because of the wording of 2 U.S.C. § 437h, a part of the Federal Election Campaign Act Amendments of 1974, which provides for decision by the Court of Appeals *en banc* of questions certified to it by the District Court concerning the "constitutionality of this Act" or of certain sections of Title 18, U.S.C. Since Subtitle H is not especially mentioned in Section 437h, the question was whether the proper route to this Court with respect to Subtitle H issues ran through the Court of Appeals under Section 437h or through a three-judge District Court under the jurisdictional provisions cited in the text. Both routes have now been followed, placing the issues before this Court regardless of which route was correct.

District Court were filed on August 15, 1975, as was the decision of the Court of Appeals. Appellants filed their Notice of Appeal to this Court on August 21, 1975 (Appendix B).

If the Court of Appeals did not have jurisdiction over the constitutional challenge to Subtitle H (see n. 2, *supra*), then the District Court of the District of Columbia had jurisdiction over that challenge by virtue of 26 U.S.C. § 9011(b) and 28 U.S.C. §§ 2282, 2284, and this Court has jurisdiction over this appeal by virtue of 28 U.S.C. §§ 1253, 2101.

STATUTE INVOLVED

The statute involved in this appeal is Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 26 U.S.C. §§ 9001 *et seq.*, as amended by Public Law 93-53, 87 Stat. 134, and as further amended by the Federal Election Campaign Act Amendments of 1974, Public Law 93-443.

The text of Subtitle H is contained at pp. 61-80 of the Senate print entitled *Federal Election Campaign Laws*, filed today as Volume III of the Appendix herein.

QUESTION PRESENTED

Did the District Court correctly conclude that the provisions of Subtitle H of the Internal Revenue Code are constitutional?

STATEMENT OF THE CASE

A complete statement of the procedural history of this case is contained in the Statement of the Case in the Jurisdictional Statement filed today by appellants in their appeal from the Court of Appeals' decision. That part of the Court of Appeals' decision which dealt with the challenge to Subtitle H was incorporated by the District Court in its judgment and order of August 15, 1975. Appellants incorporate herein the Statement of the Case in the Jurisdictional Statement filed in conjunction with the appeal taken from the decision of the Court of Appeals.

THE QUESTION IS SUBSTANTIAL

A statement of the importance of the question presented respecting the constitutional challenge to Subtitle H appears at pp. 9, 11 of the Jurisdictional Statement filed in appellants' appeal from the Court of Appeals' decision. Appellants incorporate that discussion herein.

As there shown, the federal financing of partisan political activity of some — but not all — aspirants and parties involved in presidential electoral politics raises serious and fundamental questions about the role of government in politics. The mechanisms devised by the Congress in Subtitle H for federal funding of presidential electoral activity constitute an unconstitutional "establishment" of the Democratic and Republican parties and invidiously discriminate against minor and third parties and independent candidates for President. These mechanisms, if sustained, will have incalculable but profound impact on the 1976 and every subsequent presidential election.

CONCLUSION

Probable jurisdiction should be noted, or, in the alternative, the appeal should be set for argument with the question of jurisdiction postponed to a consideration of the merits.

Respectfully submitted,

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September 19, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 1975, pursuant to Rules 33(1) and 33(3)(b) of the Rules of this Court, served all parties required to be served by causing three copies of the Jurisdictional Statement to be mailed first class, postage prepaid, to the following persons:

The Honorable Robert H. Bork
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Washington, D.C. 20530

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BRICE M. CLAGETT

September 19, 1975

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. BUCKLEY, *et al.*,
Plaintiffs,

v. CIVIL ACTION NO. 75-0001

THE HONORABLE FRANCIS R. VALEO, *et al.*,
Defendants.

JUDGMENT

This action, wherein the plaintiffs seek a declaratory judgment respecting and an injunction restraining the enforcement or operation of provisions of Subtitle H of the Internal Revenue Code of 1954 on grounds of repugnance to the Constitution of the United States, having been heard on the entire record and on the briefs and oral arguments of counsel; and

This Court having considered the constituional questions raised with respect to said provisions in light of the evidence submitted and the findings of fact made herein, and having also considered the opinion of the United States Court of Appeals for the District of Columbia Circuit and the separate opinions of judges thereof this date filed in No. 75-1061, *Buckley v. Valeo,* a proceeding leading to resolution by that Court of the same Subtitle H questions as well as constitutional questions pertaining to other Acts of Congress; and

This Court now adopting in toto, as a delineation of its views, the portions of the opinion of that Court which either answer the Subtitle H questions or conclude that such questions are unripe for judicial determination;

It is, this 15th day of August, 1975,

ADJUDGED and ORDERED by this Court that, for the reasons stated in the portions of the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Buckley v. Valeo, supra,* addressing them, the questions which this Court is called upon to consider in connection with Subtitle H of the Internal Revenue Code of 1954 be and hereby are answered as follows:

1. Does § 9011(b) of the Internal Revenue Code of 1954, *as amended,* 26 U.S.C. § 9011(b), in the context of this action, require courts of the United States to render advisory opinions in violation of the "case or controversy" requirement of Article III, § 2, of the Constitution of the United States?

Answer: NO

2. Has each of the plaintiffs alleged sufficient injury to his constitutional rights enumerated in the following questions to create a constitutional "case or controversy" within the judicial power under Article III?

Answer: YES, SUBJECT TO CONSIDERATIONS OF RIPENESS

3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(a) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the

expenditures of the national committee of a party with respect to presidential nominating conventions? (FAC ¶¶ 59, 60, 61, 62, 63, 64, 65, 86).

Answer: NO

(b) Does § 9012 of the Internal Revenue Code of 1954 violate such rights, in that it provides that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in that section? (FAC ¶¶ 78, 86, 87, 88).

Answer: UNRIPE FOR RESOLUTION

4. (a) Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

Answer: NO

(b) Does § 9012 of the Internal Revenue Code of 1954 violate such rights, in that it provides that the government may bring criminal prosecutions against anyone who violates or is about to violate the provisions recited in that section? (FAC ¶¶ 78, 86, 87, 88).

Answer: UNRIPE FOR RESOLUTION

5. Does any statutory provision for the public financing of political conventions or campaigns for nomination or election to the Presidency or Vice Presidency violate the rights of one or more of the plaintiffs under the First or Ninth Amend-

ment, the Due Process Clause of the Fifth Amendment, or Article I, Section 8, Clause 1, of the Constitution of the United States? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88).

Answer: NO

6. Do the particular provisions of Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of such rights under the First or Ninth Amendment or Article I, Section 8, Clause 1, in that they provide federal tax money to support certain political candidates, parties, movements, and organizations or in the manner that they so provide such federal tax money? (FAC ¶¶ 79, 80, 81, 82, 86, 87, 88).

Answer: NO

7. Do the provisions in the challenged statutes concerning the powers and method of appointment of the Federal Election Commission violate the rights of one or more of the plaintiffs under the constitutional separation of powers, the First, Fourth, Fifth, Sixth, or Ninth Amendment, Article I, Section 2, Clause 6, Article I, Section 5, Clause 1, or Article III?

Answer: NO

Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it empowers the Federal Election Commission to authorize expenditures of the national committee of a party with respect to presidential nominating conventions in excess of the limits enumerated therein?

Answer: NO

8. Do Internal Revenue Code of 1954 §§ 9002(2), (9); 9006(d); 9008(d)(3); 9032(2), (4), (8), and (9), and 9037 violate the constitutional rights of one or more of the plaintiffs that they are excessively vague? (FAC ¶¶ 85, 87, 88).

Answer: NO as to §§ 9002(2), 9008(d)(3); 9032(2)(2), (4).

UNRIPE FOR RESOLUTION as to §§ 9002(9), 9006(d), 9032(8), and (9), 9037.

and it is further

ADJUDGED and DECLARED by this Court that the provisions of Subtitle H challenged in this action, which, as hereinbefore identified, are ripe for judicial determination are consistent with the Constitution of the United States; and it is further

ADJUDGED and ORDERED by this Court that the plaintiffs be and hereby are denied the injunctive relief sought with respect to said provisions; and it is further

ADJUDGED and ORDERED by this Court that this action in all other respects be and hereby is dismissed.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. BUCKLEY
EUGENE J. McCARTHY
WILLIAM A. STEIGER
STEWART R. MOTT
COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY — McCARTHY '76
CONSERVATIVE PARTY OF THE STATE OF NEW YORK
MISSISSIPPI REPUBLICAN PARTY
LIBERTARIAN PARTY
NEW YORK CIVIL LIBERTIES UNION, INC.
AMERICAN CONSERVATIVE UNION
CONSERVATIVE VICTORY FUND
HUMAN EVENTS, INC.,
Plaintiffs,

and

JAMES CALAWAY
Intervening Plaintiff,

v.

FRANCIS R. VALEO, *et al.*,
Defendants,

and

CENTER FOR PUBLIC FINANCING OF ELECTIONS, *et al.*,
Intervening Defendants.

CIVIL ACTION

No. 75-0001

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Plaintiffs hereby appeal to the Supreme Court of the United States from the judgment and order of this Court, entered August 15, 1975 (except Paragraphs 1 and 2 thereof). The appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101.

Respectfully submittted,

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